

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 378 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SATISH HIMATLAL RUPARELIYA

Appearance:

MS VALIKARIMWALA APP for Petitioner
MR RAJESH M AGRAWAL for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/11/98

ORAL JUDGEMENT

Heard learned APP Ms. Valikarimwala for the applicant, learned advocate Mr. R.M. Agrawal for the respondents.

2. This is an application under Section 397 read

with section 401 CrPC against the order dated 1st May, 1998 made by the learned Specail Judge, Court No. 23, Ahmedabad below Application Exh. 39 in Sessions Case No. 56 of 1995.

3. It appears that the respondents herein are the accused in the aforesaid Criminal Case No. 56 of 1995. A charge has been framed against the accused on 16.1.1996. The accused nos. 1 & 2 are charged for commission of offence punishable under Sections 364, 302 and 394 read with Section 120(B) IPC. While the accused no. 3 is charged with the offence punishable under Section 201 IPC. On 15th April, 1998, the prosecution moved an application Exh. 39 under Section 216 CrPC for modification of the charge framed on 16.1.1996. In the said application, the prosecution has prayed that the charge framed at Exh. 9 be modified so as to incorporate further details of the offence. Alongwith the said application, the prosecution has also furnished a draft charge. Under the said draft charge, the prosecution has sought to add charge for offence punishable under Section 398 read with Section 120(B) IPC against accused nos. 1 2 and to add charge for offence punishable under Section 398 read with Section 120 (B) and Section 411 IPC against accused no. 3. The said application was rejected by the learned trial Judge under the impugned order dated 1st May, 1998. The learned Judge was of the view that no further evidence was brought on the record which would justify modification of the charge, as prayed for by the prosecution. Feeling aggrieved, the prosecution has preferred the present application.

4. Ms. Valikarimwala, the learned APP has not been able to point out any defect in the charge framed on 16th January, 1996 at Exh. 9, nor has she been able to show any evidence brought on the record which would justify alteration or addition of charge under Section 216 CrPC. In my view, therefore, the trial Judge was right in holding that the application made by the prosecution was premature and the order made by the learned trial Judge, therefore, does not require to be interferred with. Rule is discharged. Interim relief is vacated.

5. Since the impugned order dated 1st May, 1998, the trial has commenced sometime in the month of June, 1998, and as many as 18 witnesses have been examined by the prosecution, it is, therefore, clarified that this order shall not preclude the prosecution from making an application for modification of charge afresh, if the evidence brought on the record warrants any alteration or

addition of the charge.

Prakash*